

ESTTA Tracking number: **ESTTA592203**

Filing date: **03/12/2014**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	91205896
Party	Plaintiff Beau L. Tardy
Correspondence Address	WENDY PETERSON NOT JUST PATENTS LLC PO BOX 18716 MINNEAPOLIS, MN 55418 UNITED STATES wsp@NJPLS.com
Submission	Motion to Strike
Filer's Name	Wendy Peterson
Filer's e-mail	wsp@NJPLS.com
Signature	/Wendy Peterson/
Date	03/12/2014
Attachments	Motion to Strike with Exhibits A&B.pdf(166331 bytes )

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

Opposition Proceeding 91205896

In the matter of Trademark Application No. 85509929

For the mark: DIZZY

Published for Opposition Date: June 5, 2012

**Beau Tardy, Opposer/Opposer**

**v.**

**Wild Brain Entertainment, Inc., Applicant**

**MOTION TO STRIKE AFFIRMATIVE DEFENSES/MOTION TO SUSPEND  
APPLICANT'S DISCOVERY REQUESTS**

A Fourth Amended Notice of Opposition is being filed with this Motion to Strike which no longer contains Opposer's claim of likelihood of confusion. Inasmuch as all of Applicant's affirmative defenses are defenses to likelihood of confusion, Opposer ask the Board to strike all of Applicant's affirmative defenses as no longer being applicable.

Inasmuch as Applicant's discovery requests to Opposer all deal with Applicant's affirmative defenses and the likelihood of confusion claim that is no longer pending, Opposer asks that all of the attached discovery requests (Exhibits A and B) propounded by Applicant be suspended until the Board decides this motion as they are no longer applicable to this proceeding.

Submitted By: /Wendy Peterson/

Date: March 12, 2014

Wendy Peterson, Attorney for Opposer, Beau Tardy

Not Just Patents LLC

PO Box 18716

Minneapolis, MN 55418

(651) 500-7590; wsp@NJPLS.com

**CERTIFICATE OF SERVICE**

I hereby certify that on March 12, 2014, the foregoing was served upon Applicant's attorney  
by email to:

JONATHAN D REICHMAN  
KENYON & KENYON LLP  
jreichman@kenyon.com, wmerone@kenyon.com, nsardesai@kenyon.com,  
tmdocketny@kenyon.com

By: /Wendy Peterson/

Date: March 12, 2014

Wendy Peterson, Attorney for Opposer, Beau Tardy

# Exhibit A

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

BEAU L. TARDY,

Opposer,

v.

WILD BRAIN ENTERTAINMENT, INC.,

Applicant.

Opposition No.: 91/205,896

Mark: DIZZY

**WILD BRAIN ENTERTAINMENT, INC.'S FIRST SET OF INTERROGATORIES**

Pursuant to Rule 33 of the Federal Rules of Civil Procedure and Section 2.120 of the Trademark Rules of Practice of the United States Patent and Trademark Office, Applicant Wild Brain Entertainment, Inc. (hereinafter “Applicant”) hereby propounds the following written Interrogatories to be answered by Beau L. Tardy (hereinafter “Opposer”), separately and under oath, by serving written responses to the offices of Kenyon & Kenyon LLP, 1 Broadway, New York, New York 10004, within thirty (30) days of the date of service of this *First Set of Interrogatories*, pursuant to the attached Definitions and Instructions. These Interrogatories are continuing in nature, and impose upon Opposer the obligations set forth in Rule 26(e) of the Federal Rules of Civil Procedure.

**DEFINITIONS AND INSTRUCTIONS**

These Interrogatories, and *Wild Brain Entertainment, Inc.’s First Set of Document Requests* being served concurrently herewith, are subject to the definitions and instructions set forth below:

(a) The term “Opposer” shall refer to Beau L. Tardy, and any predecessors-in-interest, predecessor or successor corporation or entity; any parent, subsidiary, or affiliated company; and any attorney, officer, director, agent, representative or employee of Beau L. Tardy or any of the other foregoing entities.

(b) The term “Applicant” shall refer to Wild Brain Entertainment, Inc., and any predecessor or successor corporation or entity; any parent, subsidiary or affiliated company; and any attorney, officer, director, agent, representative or employee of Wild Brain Entertainment, Inc. or any of the other foregoing entities.

(c) The term “Notice of Opposition” shall refer to the *Notice of Opposition* filed by Opposer in the above-captioned proceeding.

(d) The term “bear” or “bearing” in connection with “designation,” “mark,” “Mark,” “trademark,” or “trade name,” as in, for example, “bearing the designation,” or “bearing the mark,” shall refer to the designation appearing on the product itself, on tags or labels for the product, on packaging for the product, on displays associated with the product, or in any other way used in connection with the product that would be considered “use” under United States trademark laws.

(e) The term the “Application” shall refer to the United States Trademark Application that is the subject of the above-captioned proceeding.

(f) “Good” or “goods” shall be construed to include a “service” or “services.”

(g) The term “documents” shall include, without limitation, all “writings” or “photographs” of any kind, as those terms are defined in Rule 1001(1) and (2) of the Federal Rules of Evidence (hereinafter the “FRE”), including the “original” of any such documents, as that term is defined in FRE 1001(3), drafts, and non-identical copies (whether differing from the

original by reason of notations made on the copies or otherwise), and any “duplicate” of said documents, as that term is defined in FRE 1001(4), and shall further include, without limitation, the following items, whether printed or recorded, or reproduced by any electronic or mechanical means or process, or written or produced by hand: writings; drawings; graphs, charts; photographs; phone records; correspondence; notes; telegrams; telefaxes, facsimile transmissions; agreements; drafts of agreements; memoranda; summaries of records of telephone conversations; instructions to employees or independent contractors; opinions; training manuals; reports; laboratory and engineering reports or notebooks; field test reports; studies; diaries; plans; brochures; compact discs and all packaging and inserts therefor; advertisements; marketing and promotional materials; specifications; bids; proposals; contracts; trademark applications; trademark registrations; surveys; copyright applications; copyright registrations; patents; patent applications; computer program specifications including input or output specifications; job orders; bills of lading; purchase orders; invoices; material specifications; investigative reports; data compilations from which information can be obtained, or translated, if necessary, through detection devices into reasonably useable form; computer programs; source listings; electronic mail; data processing storage media; and computer printouts.

(h) The term “relating to” shall include, without limitation, referring to, responding to, concerning, connected with, commenting on, regarding, discussing, showing, describing, evidencing, reflecting, analyzing, constituting, and forming a basis for.

(i) The term “person,” as well as any pronoun referring thereto, shall include, but shall not be limited to, any natural person, group, investigatory body, governmental unit, governmental agency, governmental department, corporation, association, partnership, limited



partnership, joint venture, sole proprietorship, business, business entity, organization, or institution.

(j) The term “entity” shall refer to a person, organization, corporation, partnership, business, association, or other enterprise carrying on a trade or business.

(k) The term “communication” shall refer to the transmittal of information in the form of facts, opinions, ideas, inquiries, or otherwise, whether oral or written or in electronic form.

(l) Any word written herein in the singular shall be construed as plural, or vice versa, when necessary to facilitate an inclusive, comprehensive, and exhaustive answer to the discovery request.

(m) “And” and “or” shall be construed disjunctively and/or conjunctively as necessary in order to bring within the scope of the discovery request all possible responses which might otherwise be construed to be outside its scope.

(n) “Identify” when used herein with respect to a person, shall require a response that includes, without limitation:

- (i) the person’s full name;
- (ii) the person’s employer, business position, and business address at the relevant time; and
- (iii) the person’s last known employer, business position, business address, telephone numbers, facsimile number, and email address.

(o) “Identify” or “state” when used herein with respect to a business entity, shall require a response that includes, without limitation:

- (i) the entity’s full name;

- (ii) the entity's principal place of business;
- (iii) the nature or type of entity;
- (iv) the state of incorporation or registration, if applicable; and
- (v) the principal business conducted by such entity.

(p) "Identify" or "state" when used herein with respect to a document or communication, shall require a response that includes, without limitation:

- (i) the general character, nature, or type of the document or communication;
- (ii) the date of the document or communication, or if it has no date or the date is uncertain, the approximate date of its preparation or occurrence;
- (iii) the title of the document;
- (iv) the full name(s) of the author(s) and all addressee(s) and recipient(s) of the document or communication;
- (v) a summary of the document's or communication's subject matter;
- (vi) the present location and custodian of the document or communication or any copies thereof; and
- (vii) a file number or other identifying mark or code, if applicable.

(q) These are continuing interrogatories and requests, and therefore require further and supplemental responses by Opposer as it acquires or locates additional information responsive to these interrogatories and requests.

(r) If any document(s) requested to be identified or produced has been destroyed, a response shall require the following additional information as to each such document:

- (i) the date of destruction of the document;
- (ii) the reason for the destruction of the document;

- (iii) the identity of the person who destroyed the document; and
  - (iv) the identity of any person who directed that the document be destroyed.
- (s) If any of these discovery requests cannot be answered in full, respond to the fullest extent possible, specifying the reasons for the inability to respond to the remainder of the discovery request, and state whatever information or knowledge is available concerning the unanswered portion.

If any responsive information, communication or document is withheld on the basis of any claim of privilege, a response shall require a general description of the substance or subject matter of the information, communication, or document withheld, a statement of the privilege being invoked or claimed and the basis therefor, and identification all persons who have had access to such information, communication or document. Where applicable, a response shall also require the date of the document and identification of the author or sender, addressee, and all recipients thereof, by name, address, title, and business affiliation.

## **INTERROGATORIES**

### **Interrogatory No. 1**

With respect to each business entity referenced in Paragraph 1 of the Notice of Opposition, identify and describe them in detail, including providing each such entity's name; particulars of each such entity's organization; the state under which each such entity was organized; each such entity's corporate status from 1996 to present; the effective date(s) and expiration or dissolution date(s) of same; and the officers and employees of each such entity from 1996 to present; and identify all documents relating thereto.

**Interrogatory No. 2**

Describe in detail by year, beginning with your earliest alleged use, how, where, and in what form Opposer and/or Opposer's predecessors-in-interest used the DIZZY mark in commerce in the United States for any business, good, or service, and identify documents sufficient to evidence such use by year for each such business, good, or services.

**Interrogatory No. 3**

Identify the time periods that Opposer used the DIZZY mark as a "company name," for any "merchandise," "pop culture websites," "cartoon character," "TV show," or "comics," or for "streaming entertainment," as set forth in your Amended Notice of Opposition, and identify specimens that evidence such use in connection with each of the above-listed goods or services for each year within each period the mark was so used for those goods or services, and all documents relating thereto.

**Interrogatory No. 4**

Identify every outlet (whether retailer, distributor, individual websites, media outlet, online channel, etc.) through which any goods and services bearing or sold in connection with the DIZZY mark were distributed, sold, or offered for sale in the United States, including by describing what goods or services were distributed, sold, or offered for sale through each such outlet and the dates those goods or services were distributed, sold, or offered for sale through each outlet, and identify all documents relating thereto.

**Interrogatory No. 5**

Identify the person(s) most knowledgeable concerning the marketing, offering, distribution, and sale of goods and services bearing or sold in connection with the DIZZY mark in the United States, and identify all documents relating thereto.

**Interrogatory No. 6**

For each good or service that you have distributed or sold that either bears or was distributed or sold in connection with the DIZZY mark, state by quarter (or if quarterly information is not available, then by year) the quantity (if applicable) and total gross revenue generated by the distribution or sale of each such good or service in the United States, and identify all documents relating thereto.

**Interrogatory No. 7**

For goods and services bearing or sold in connection with the DIZZY mark, identify for each year that each such good or service was distributed, sold, or offered for sale the specific geographic location(s) (i.e., city and state) in which such goods were sold or offered for sale in the United States and the dates each of those goods were offered for sale there, and identify all documents relating thereto.

**Interrogatory No. 8**

For each good or service that you have distributed or sold that either bears or was distributed or sold in connection with the DIZZY mark, state by quarter (or if quarterly information is not available, then by year) the total amount spent advertising or promoting each such good or service in the United States and identify all of the advertising outlets (whether television station, radio station, Internet website, etc.) through which any such advertisements for the DIZZY mark were broadcasted or exhibited in the United States, and identify all documents relating thereto.

**Interrogatory No. 9**

For each good or service that you have distributed or sold that either bears or was distributed or sold in connection with the DIZZY mark, identify the persons with the most knowledge

concerning such use (including first use) of the mark in the United States, and identify all documents relating thereto.

**Interrogatory No. 10**

For each good or service that you have distributed or sold that either bears or was distributed or sold in connection with the DIZZY mark, identify the person(s) with the most knowledge concerning the marketing, promotion, and sale of such goods and services in the United States, and identify all documents relating thereto.

**Interrogatory No. 11**

For each good or service that you have distributed or sold that either bears or was distributed or sold in connection with the DIZZY mark, identify (including by providing contact information for) the manufacturer(s) of the goods and/or the provider of such including by indicating the period that each such manufacture or provider was responsible for the manufacture or provision of the goods or services, and identify all documents relating thereto.

**Interrogatory No. 12**

For each good or service that you have distributed or sold that either bears or was distributed or sold in connection with the DIZZY mark, identify (including by providing contact information for) the distributors, retailers, and/or other outlets to or through whom Opposer has sold and/or distributed such goods and services in the United States, including by indicating the period that each such distributor, retailers, and/or other outlet was involved in the sale or distribution of the goods or services, and identify all documents relating thereto.

**Interrogatory No. 13**

Identify all persons who furnished any information used in responding to each of the foregoing interrogatories and to *Wild Brain Entertainment, Inc.'s First Set of Document Requests*, and for

each person so identified, indicate the discovery request for which such person furnished information, and identify all documents referred to or considered in responding to the foregoing interrogatories.

Dated: February 12, 2014

KENYON & KENYON LLP

*Attorneys for Applicant  
Wild Brain Entertainment, Inc.*



---

Jonathan D. Reichman  
William Merone  
Natasha Sardesai-Grant  
One Broadway  
New York, New York 10004  
Tel: 212-425-7200  
Fax: 212-425-5288  
jreichman@kenyon.com  
wmerone@kenyon.com  
nsardesai@kenyon.com  
tmdocketny@kenyon.com

## **CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of *Wild Brain Entertainment, Inc.'s First Set of Interrogatories* was served by electronic mail, as agreed upon by the parties, on Opposer's counsel of record on the 12<sup>th</sup> day of February, 2014, at the following address of record:

Wendy Peterson  
Not Just Patents LLC  
P.O. Box 18716  
Minneapolis, Minnesota 55418  
wsp@njpls.com



---

Natasha Sardesai-Grant



# Exhibit B

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

BEAU L. TARDY,

Opposer,

v.

WILD BRAIN ENTERTAINMENT, INC.,

Applicant.

Opposition No.: 91/205,896

Mark: DIZZY

**WILD BRAIN ENTERTAINMENT, INC.’S FIRST SET OF  
REQUESTS FOR THE PRODUCTION OF DOCUMENTS AND THINGS**

Pursuant to Rule 34 of the Federal Rules of Civil Procedure, and Section 2.120 of the Trademark Rules of Practice of the United States Patent and Trademark Office, Opposer Wild Brain Entertainment, Inc. (hereinafter “Applicant”) hereby requests that Opposer Beau L. Tardy (hereinafter “Opposer”) produce the documents and things listed below for inspection and copying at the offices of Kenyon & Kenyon LLP, 1 Broadway, New York, New York 10004, within thirty (30) days of the date of service of this *First Set of Requests for the Production of Documents and Things*, pursuant to the attached Definitions and Instructions. These requests are continuing in nature, and impose upon Opposer the obligations as stated in Rule 26(e) of the Federal Rules of Civil Procedure.

**DEFINITIONS AND INSTRUCTIONS**

The definitions and instructions contained in *Applicant Wild Brain Entertainment, Inc.’s First Set of Interrogatories* are hereby incorporated by reference as though fully set forth herein.

The following additional instructions are to be used with respect to each request contained herein:

(a) Opposer is required to furnish responsive documents within its possession, custody, or control, or within the possession, custody, or control of its attorneys, agents, representatives, or employees.

(b) Each response shall be made based upon Opposer's entire knowledge and acquired with due diligence from all available sources, including without limitation all information in Opposer's possession or that of its agents, representatives, or attorneys.

(c) If Opposer cannot respond to a request in full after exercising the due diligence necessary to secure the applicable documents and/or things, Opposer shall respond to the extent possible, and set forth and describe in detail all efforts to ascertain the requested documents and/or things.

(d) If Opposer qualifies a response in any manner, Opposer shall set forth the exact nature and extent of the qualification.

(e) Wherever reasonably practical, please produce documents in such a manner as will facilitate their identification with the particular request or category of requests to which they are responsive, pursuant to the provisions of Rule 34(b) of the Federal Rules of Civil Procedure.

## **DOCUMENT REQUESTS**

### **Request No. 1**

Any and all documents and things which identify each person or entity which has held an ownership interest in Opposer's DIZZY mark at any time between 1996 and the present.

### **Request No. 2**

Any and all documents and things which comprise, reflect, or relate to the chain-of-title regarding ownership of Opposer's DIZZY mark between 1996 and the present.

**Request No. 3**

Any and all documents and things which reflect, confirm, or establish the use of DIZZY as a company name, as referred to in Paragraph 1 of the Amended Notice of Opposition.

**Request No. 4**

Any and all documents and things which reflect, confirm, or establish the use of DIZZY in connection with merchandise, as referred to in Paragraph 1 of the Amended Notice of Opposition.

**Request No. 5**

Any and all documents and things which reflect, confirm, or establish the use of DIZZY in connection with pop culture websites, as referred to in Paragraph 1 of the Amended Notice of Opposition.

**Request No. 6**

Any and all documents and things which reflect, confirm, or establish the use of DIZZY in connection with cartoon character, as referred to in Paragraph 1 of the Amended Notice of Opposition.

**Request No. 7**

Any and all documents and things which reflect, confirm, or establish the use of DIZZY in connection with TV show, as referred to in Paragraph 1 of the Amended Notice of Opposition.

**Request No. 8**

Any and all documents and things which reflect, confirm, or establish the use of DIZZY in connection with comics, as referred to in Paragraph 1 of the Amended Notice of Opposition.

**Request No. 9**

Any and all documents and things which reflect, confirm, or establish the use of DIZZY in connection with web streaming entertainment, as referred to in Paragraph 1 of the Amended Notice of Opposition.

**Request No. 10**

Any and all documents and things which support Opposer's allegation in Paragraph 2 that it produces cartoon characters (other than DIZZY) for entertainment purposes.

**Request No. 11**

Any and all documents and things which support Opposer's allegation in Paragraph 2 that it uses its cartoon characters to advertise collateral goods and entertainment services.

**Request No. 12**

Any and all documents and things which reflect, confirm, or establish Opposer's alleged common law rights in the goods identified in Paragraph 4.

**Request No. 13**

Any and all documents and things which reflect, confirm, or establish that Opposer's DIZZY mark "was first used anywhere in a different form other than that sought to be registered at least as early as 12/31/1996."

**Request No. 14**

Any and all documents and things which reflect, confirm, or establish that Opposer has used DIZZY in commerce "since at least 1996 . . . for Production [sic] of television commercials, television programs, cartoons, animations, games, screensavers and other forms of entertainment."

**Request No. 15**

Any and all documents and things which identify the “predecessor-in-interest” referred to in Paragraph 5.

**Request No. 16**

Any and all documents and things which reflect, confirm, or establish the abandonment of rights by Opposer’s predecessor-in-interest, as referred to in Paragraph 5.

**Request No. 17**

Any and all documents and things which reflect, confirm, or establish Opposer’s “privity of interest” as referred to in Paragraph 5.

**Request No. 18**

Any and all documents and things which reflect the class of purchasers for Opposer’s goods and services, as referred to in Paragraph 27.

**Request No. 19**

Any and all documents and things which comprise or relate to any search or clearance reports for the mark DIZZY obtained or procured by or on behalf of Opposer.

**Request No. 20**

Any and all documents and things which comprise, refer, or relate to Registrations Nos. 2,339,835 and 2,339,836, including without limitation any decision to allow such registrations to expire.

**Request No. 21**

With respect to each business entity referenced in Paragraph 1 of the Notice of Opposition, any and all documents and things which reflect each such entity’s organization; the state under which each entity was organized; each entity’s corporate status from 1996 to present; the effective

date(s) and expiration or dissolution date(s) of same; and the officers and employees of each of the entities from 1996 to present.

**Request No. 22**

Any and all documents and things describing by year, beginning with your earliest alleged use, how, where, and in what form Opposer and/or Opposer's predecessors-in-interest used the DIZZY mark in commerce in the United States for any business, good, or service, and identify documents sufficient to evidence such use by year for each such business, good, or services.

**Request No. 23**

Any and all documents and things relating to the channel(s) of trade in connection with the sale of goods and services bearing or sold in connection with the DIZZY mark in the United States.

**Request No. 24**

Any and all documents and things identifying or listing every outlet (whether retailer, distributor, individual websites, media outlet, online channels, etc.) in the United States which have sold or offered for sale any goods and services bearing or sold in connection with the DIZZY mark.

**Request No. 25**

All invoices and purchase orders for goods and services bearing or sold in connection with the DIZZY mark in the United States.

**Request No. 26**

Any and all documents and things evidencing or relating to the total gross revenue generated from the sales of goods and services bearing or sold in connection with the DIZZY mark in the United States, by quarter (or if quarterly information is not available, then by year).

**Request No. 27**

Any and all documents and things evidencing or relating to the total number of units of Opposer's (or Opposer's predecessors in interest's) goods and services sold under the DIZZY mark in the United States, by quarter (or if quarterly information is not available, then by year).

**Request No. 28**

Any and all documents and things evidencing the geographic location(s) at which Opposer's (or Opposer's predecessors in interest's) goods and services have been sold under the DIZZY mark in the United States, by quarter (or if quarterly information is not available, then by year), including the dates each of those goods were offered for sale there.

**Request No. 29**

All annual, quarterly, monthly, and weekly sales reports and/or royalty reports for each of goods and services bearing or sold in connection with the DIZZY mark.

**Request No. 30**

Any and all documents and things comprising or regarding the marketing, promotion, or advertising of goods and services bearing or sold in connection with the DIZZY mark in the United States, including any and all expenditures therefor, by quarter (or if quarterly information is not available, then by year).

**Request No. 31**

Representative samples of all printed publications, television exhibitions, radio exhibitions, Internet exhibitions, and website pages relating to the advertising or promotion of the DIZZY mark in connection with Opposer's (or Opposer's predecessors in interest's) goods and services in the United States.



**Request No. 32**

Representative samples of each type of label, container, carton, tag, invoice, sticker, embossing, box, bag, packaging, silkscreen, or other means by which Opposer (including its predecessors-in-interest) has used the DIZZY mark in connection with Opposer's (or Opposer's predecessors in interest's) goods and services in the United States.

**Request No. 33**

Any and all documents and things relating to any time Opposer has ever challenged a third party regarding the use of the DIZZY mark (or other designation in which Opposer considered such mark to be in conflict with the DIZZY mark) in the United States, including, without limitation:

- (a) Any and all documents and things identifying the third party;
- (b) Any and all documents and things describing the designation used and the goods or services in connection with which it is or was used;
- (c) Any and all documents and things describing the nature of the action taken by Opposer, including, without limitation any and all protest letters sent by Opposer or legal proceedings instituted by Opposer; and
- (d) Any and all documents and things describing the results, if any, of said action.

**Request No. 34**

Any and all documents and things relating to any time Opposer has ever been challenged by a third party regarding the use of the DIZZY mark (or other designation in which the challenger considered such mark to be in conflict with the DIZZY mark) in the United States, including, without limitation:

- (e) Any and all documents and things identifying the third party;
- (f) Any and all documents and things describing the designation used and the goods or services in connection with which it is or was used;
- (g) Any and all documents and things describing the nature of the action taken by Opposer, including, without limitation any and all protest letters sent by Opposer or legal proceedings instituted by Opposer; and

(h) Any and all documents and things describing the results, if any, of said action.

**Request No. 35**

Any and all licenses or permissions granted by Opposer (including its predecessors-in-interest) to any third party with respect to use of the DIZZY mark in the United States, including any related correspondence.

**Request No. 36**

Any and all documents and things concerning Applicant.

**Request No. 37**

Samples of goods and services that make use of the DIZZY mark in the United States.

**Request No. 38**

Any and all documents and things sufficient to identify the total number of goods and services, by quarter and by product or service name, sold and/or distributed to consumers under the DIZZY mark in the United States.

**Request No. 39**

Any and all documents and things sufficient to identify the compensation that Opposer has received, by quarter and by product or service name, for all goods and services sold and/or distributed under the DIZZY mark in the United States.

**Request No. 40**

Any and all documents and things sufficient to identify all persons involved in the distribution or sale of goods and services bearing or sold in connection with the DIZZY mark to consumers in the United States.

**Request No. 41**

Any and all documents and things related to United States Trademark Application Serial No. 85/741,800.

**Request No. 42**

Any and all documents and things identified by Opposer in response to the Interrogatories which are not otherwise covered by these Requests.

Dated: February 12, 2014

KENYON & KENYON LLP

*Attorneys for Applicant  
Wild Brain Entertainment, Inc.*



---

Jonathan D. Reichman  
William Merone  
Natasha Sardesai-Grant  
One Broadway  
New York, New York 10004  
Tel: 212-425-7200  
Fax: 212-425-5288  
jreichman@kenyon.com  
wmerone@kenyon.com  
nsardesai@kenyon.com  
tmdocketny@kenyon.com

## CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of *Wild Brain Entertainment, Inc.'s First Set of Requests for the Production of Documents and Things* was served by electronic mail, as agreed upon by the parties, on Opposer's counsel of record on the 12<sup>th</sup> day of February, 2014, at the following address of record:

Wendy Peterson  
Not Just Patents LLC  
P.O. Box 18716  
Minneapolis, Minnesota 55418  
wsp@njpls.com



---

Natasha Sardesai-Grant